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11-AFC-2

TN # 67058

SEP 08 2012

STATE OF CALIFORNIA
Energy Resources Conservation and Development Commission

In the Matter of:

APPLICATION FOR CERTIFICATION FOR THE
HIDDEN HILLS SOLAR ELECTRIC
GENERATING SYSTEM

Docket No. 11-AFC-02

**OBJECTION TO RESPONSE LETTER
MOTION TO CORRECT FACTUAL AND LEGAL ERRORS FOR CONSIDERATION
AND REQUEST FOR ORDER THAT APPLICANT “CEASE AND DESIST”**

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Exhibit A: Record of Conversation from Hearing Officer Celli To All Parties

I. INTRODUCTION AND SUMMARY OF RELIEF REQUESTED

On September 7, 2012, Applicant submitted a responsive letter to Hearing Officer Celli titled “Response to Requests for Additional Time (11-AFC-2)”.

Applicant’s response contains multiple factual and legal errors throughout the document that this Objection and Motion seek to remedy.

There are also additional concerns regarding the application of consistent procedure with respect to Motions, Requests and Objections in general that require clarification and direction.

Finally, Applicant commits to statements that imply Applicant is both representing and speaking on my behalf. This has caused me to seek relief through the Commission by requesting they order the Applicant to refrain and “cease and desist” from this kind of misrepresentation in any future statements.

II. STATEMENT OF FACTS

On August 15th, 2012, Applicant submitted a letter to the Commission requesting an extension on the release of the Final Staff Assessment. The letter never mentions the Applicant’s intent to use this extension to file the “Motion In Limine”.

On August 16th, 2012, a CEC Status Conference was held regarding the progress and status of the Hidden Hills SEGS. Here, Applicant announces their consideration of and possible intention of filing a “Motion To Limit”. Though a basic overview of the scope of what would be included was generally discussed, Applicant stated they were “still kind of formulating them”. (*See* Status Conference Before the Energy Resources Conservation and Development Commission of the State of California In The Matter of the Hidden Hills SEGS, August 16, 2012, Transcript, p. 20, line 5 & 6).

During the Status Conference, at least two general objections were raised during the Applicant's lengthy discussions on the possibility of filing the "Motion To Limit" (See Staff Counsel Willis, p. 21, Public Advisor Jennings, p. 55.)

Through the entire proceedings, Hearing Officer Celli presented no call for "pre-filing objections" of the Applicant's potential future Motion or potential schedules that might occur as a result. In fact, Officer Celli added considerable confusion to the proceedings by jumping to a discussion of potential scheduling considerations for Applicant's possible Motion directly in the middle of discussion that was occurring about the Hidden Hills SEGS Draft Proposed Schedule For Discussion At Status Conference. (*See Status Conference Before the Energy Resources Conservation and Development Commission of the State of California In The Matter of the Hidden Hills SEGS*, August 16, 2012, Transcript, p. 45-55).

On August 31, 2012, the Applicant filed the "Motion In Limine" that provided the specific points they desired the Committee and/or Commission to address.

On September 5, 2012, at 9:56 a.m. the Center For Biological Diversity (CBD) filed a "Request for Briefing Schedule And To Provide Additional Time To Respond To Applicant's Motion". At 11:45 a.m., Hearing Officer Celli sent out an email to the HHSEGS Proof of Service (POS) list requesting a response from all parties regarding the matter of whether anyone intended to oppose CBD's request.

On September 5, 2012, at 12:25 p.m., I filed the "Motion To Extend Party Response Time To Applicant's 'Motion In Limine'."

On September 7, 2012, the Applicant filed a letter addressed to Hearing Office Celli titled, "Response to Requests for Additional Time (11-AFC-2)."

III. ARGUMENTS

There are several factual and legal errors contained in the Applicant's "Response Letter" that require rectification in the public record and/or dismissal from consideration by the Commission and/or Committee. Additionally, one of the results of these factual and legal errors is Applicant's statements alleging they are both representing me and speaking on my behalf.

A. Motion Is Not A Request

The Applicant's response letter refers to my "Motion To Extend Party Response Time", not as a Motion, but as a "request." Requests may be ignored by the Committee, Motions authorize the Committee to grant the request. (See CEC General Orders Regarding Electronic Document Formats, Filing and Service of Documents and Other Matters, Motions, p. 3)

Applicant also makes the factual error in asserting that they are "responding" to a request made by Officer Celli regarding my Motion, which is a separate and distinct filing from the CBD's "request". I never saw a single response from the POS list regarding a "separate" request from Officer Celli with respect to my Motion and have confirmed from at least one party on the POS list that they received no separate request from Officer Celli regarding an objection to my Motion specifically.

Additionally, Applicant's response is addressed to Hearing Officer Celli, who has no authority to grant a request made through a Motion, which is an authority solely delegated to the Commission.

As a result of these factual and legal errors, the Commission should both rectify these errors in the public record and consider CBD's "request" and my "Motion" as separate and distinct documents pursuant to §§ 20 C.C.R. 1716.5.

B. Factual Errors Regarding Party Knowledge and Required Responses

Applicant's response letter makes the inaccurate statement that parties were aware of the purpose of the Applicant's request to extend the publication date of the FSA. As previously indicated, no mention of Applicant's intent to use the extension of the FSA publication date to support an upcoming motion was included in the request.

Applicant's assertion is patently false that "Applicant voluntarily accepted a five week slip in the date for production of the FSA, which all parties readily accepted, affording concurrently both (1) time for Staff's further consideration of the parties' comments on the PSA and (2) consideration of the Motion".

1. Applicant did not "voluntarily accept a five-week slip"; Applicant solely initiated this request and are singularly responsible for requesting the five week delay in the FSA publication date.

2. All parties "readily accepted" an extension of the FSA publication date because there was general agreement and consensus between the parties with the premises put forth by the Applicant in that request, the general thrust being "all parties have an interest in ensuring that the Staff has adequate time to consider their comments, and draft an FSA that appropriately addresses the issues they have raised in their comments." At no time did all parties "readily agree" to terms and conditions of a Motion that had yet to be filed or fully disclosed or waive their rights in this proceeding as Applicant suggests.

3. Applicant continues issuing false statements by asserting that "it is unclear whether the Applicant could have agreed to forego production of the FSA on September 11th", [in the context of entertaining the possibility that proceedings might be engaged in a serial versus a concurrent

fashion.] Applicant was solely responsible for filing a request for an extension of the FSA and they filed it without any disclosure to the parties of their future intentions to file the “Motion In Limine”. Also, Applicant did not receive a “Staff confirmation” that it could meet the September 11, 2012, date for the FSA until after they had already filed the request. Furthermore, there was nothing to “agree to” with respect to the other parties as Applicant did not “consult” with those on the POS list prior to their filing a request for an extension on the FSA.

Applicant seems to be contending that they may have “changed their minds” if they could have foreseen the potential consequences of their actions and then carries this absurd notion further by demanding the parties rights, and the Commission’s considerations, be limited by their hindsight.

4. With respect to the anticipated filing of Applicant’s “Motion In Limine”, Applicant states that “no parties objected to that filing date at the August Status Conference” and continues with supporting this argument by stating “All parties were on notice regarding the date for the filing of the Motion, the need for a timely response, if any, and no party objected to the scheduling for the Motion at the August Status Conference”.

Applicant then uses these statements to presume that all actions and statements surrounding a potential Motion, its content and its filing date, require all parties to object to these potential future occurrences and potential scheduling options prior to Applicant actually filing the Motion or the Commission actually making a scheduling decision.

Furthermore, Applicant appears to contend that the discussions that occurred in the August Status Conference must be interpreted to mean that all rights, considerations, actions, decisions, scheduling, and any other relevant matter presented during the August Status Conference had already been set in motion and decided by Hearing Officer Celli – before the Applicant ever filed the Motion!

5. Applicant attempts to cite as legal fact that filing any Motion constitutes “normal regulatory procedures”, irregardless of its content. There is no comparison between filing any Motion and the specific contents of what is contained in Applicant’s “Motion In Limine”. It is the content of the Applicant’s Motion that seeks to subvert the normal regulatory processes, not the fact that they filed a “motion”.

C. Clarification of Procedures For Motions, Requests and Objections

After the “Motion In Limine” was filed with the POS, I never received a request from Hearing Officer Celli raising the question of anyone’s intent to object to the Applicant’s “Motion”. The issue of raising objections to Motions was referenced by Officer Celli in an e-mail correspondence dated June 22, 2012, titled, “Response to Cindy MacDonald’s Motion To Extend The Public Comment Period For the HHSEGS PSA (11-AFC-02). (See Exhibit A). Within it, Officer Celli states that “...in absence of any objection to the extension of the comment period from any party.”

Since Officer Celli sent out no request to the POS list regarding an intention to object to the Applicant’s “Motion In Limine” nor was such a request sent out for my “Motion To Extend Party Response Time To Applicant’s Motion In Limine”, only to CBD’s “Request”, will the Commission and/or Committee please clarify the procedural requirements for Motions, Objections and Requests to the all the parties for future reference?

D. Response Letter Presents False Representation

Applicant repeatedly makes statements throughout their response letter that could lead an unsuspecting reader or general member of the public to assume they are speaking for “all parties concerned” and I seriously object to my inclusion in their statements as a concurring party.

I don't need a "timely ruling" on significant and critical legal matters that may set future precedent in subsequent AFC proceedings. I need assurances that the informed decision-making is alive and well and that the public interest is not being subverted or oppressed through excessive catering to Applicant's exclusive needs.

It should also be glaringly apparent by both my Motion and its contents that I vehemently disagree with Applicant's unsubstantiated and ludicrous statement that "...the Motion – and the optional response for all parties – affords additional opportunities for public participation...".

In fact, the steady stream of Applicant's misrepresentation, factual and legal errors, and erroneous information during this process has resulted in the almost constant personal internal debate in trying to weigh how much time, effort and resources I should devote towards "side-bar" activities such as this "Motion" or filing the "Motion To Extend Party Response Time To Applicant's 'Motion In Limine'" instead of being able to solely focus on preparing for the Evidentiary Hearings or now, having to slam together inadequate responses to Applicant's Motion if the Commission fails to grant a fair extension to the required response time.

In both of these most recent instances, the decision had to weigh towards losing precious time in efforts to counter and object "on record" to Applicant's factual and legal chicanery.

IV. PRAYER FOR RELIEF

In order to ensure that decision makers will be able to consider legitimate facts in their deliberations during the decision making process, as well as to ensure the citizenry is adequately and reasonably informed, it is imperative that the public record provide evidence that contain factual and legal accuracy. Applicant's response letter allows for neither.

Therefore, it is in the public interest to dismiss from consideration any false or misrepresenting statements presented before the Committee and/or Commission during their deliberations.

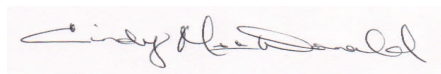
As such, the Committee and/or Commission should apply due diligence in attempting to rectify any factual or legal errors in the public record that have been presented before them regarding all aspects of the proceedings that relate to Applicant's filing of the "Motion In Limine"

Furthermore, if necessary, the Committee and/or Commission should clarify the procedural requirements and expectations placed upon all parties with respect to the filings of Motions, Requests, Objections as there does seem to be some serious confusion between the parties regarding this subject matter.

Finally, the Committee and/or Commission must order the Applicant to refrain from and "cease and desist" in making statements that imply they are representing or speaking for any other party beside themselves in all future proceedings.

Dated: September 8, 2012

Respectfully submitted by,

A handwritten signature in black ink, appearing to read "Cindy R. Mac Donald", is written over a light pink rectangular background.

CINDY R. MAC DONALD/INTERVENOR
3605 Silver Sand Court
North Las Vegas, NV 89032

EXHIBIT A
Record of Conversation from Hearing Officer Celli To All Parties

----- Original Message -----

From: "Celli, Ken@Energy" <Ken.Celli@energy.ca.gov>

Sent: Friday, June 22, 2012 10:49 AM

Subject: Response to Cindy MacDonald's Motion to Extend the Public Comment Period for the HHSEGS PSA (11-AFC-02)

TO THE PARTIES:

In light of Staff's extension of the PSA comment period to July 23, 2012, which is the relief sought by Intervenor Cindy MacDonald; and in the absence of objection to the extension of the comment period from any party, there is no need for the Committee to respond to Cindy MacDonald's Motion to Extend the Public Comment Period for the PSA in the HHSEGS matter, as Staff's voluntary extension has rendered the motion moot.

Kenneth D. Celli
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**APPLICATION FOR CERTIFICATION FOR THE
HIDDEN HILLS SOLAR ELECTRIC
GENERATING SYSTEM**

Docket No. 11-AFC-02

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(Revised 8/27/12)

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DECLARATION OF SERVICE

I, Cindy R. MacDonald, declare that on September 8, 2012, I served and filed copies of the attached Objection To Response Letter: Motion To Correct Factual and Legal Errors For Consideration, Request For Order That Applicant "Cease and Desist", dated September 8, 2012. This document is accompanied by the most recent Proof of Service list, located on the web page for this project at: www.energy.ca.gov/sitingcases/hiddenhills/index.html.

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

(Check all that Apply)

For service to all other parties:

- X Served electronically to all e-mail addresses on the Proof of Service list;
- Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "e-mail preferred."

AND

For filing with the Docket Unit at the Energy Commission:

- X by sending an electronic copy to the e-mail address below (preferred method); **OR**
- by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

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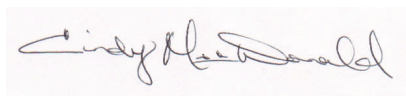
Attn: Docket No. 11-AFC-02
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docket@energy.ca.gov

OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

- Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

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I declare under penalty of perjury that the foregoing is true and correct.



Cindy R. MacDonald